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IN THE

Supreme Court of the United States

October Term, 1972
No. 72-1195

AMERICAN PIPE AND CONSTRUCTION CO., SMITH-SCOTT CO., INC., UNITED CONCRETE PIPE COMPANY, KAISER STEEL CORPORATION, UNITED STATES STEEL CORPORATION, U.S. INDUSTRIES, INC., UTAH CONCRETE PIPE COMPANY, W. R. WHITE COMPANY, all corporations,

Petitioners,

vs.

STATE OF UTAH, a body politic, *et al.*,

Respondents.

PETITION FOR REHEARING.

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Petitioners,

vs.

STATE OF UTAH, a body politic, *et al.*,

Respondents.

PETITION FOR REHEARING.

Petitioners respectfully petition this Court for a rehearing of the above-entitled cause as to certain respondents[1] who filed motions for intervention in the District Court on December 29, 1969 [A. 4, 386-87; R. 364-66].

This Petition for Rehearing is based upon the fact that certain of the respondents did not move to intervene before the District Court until *after* the eleven-day period for intervention stated in this Court's Opinion (United States Supreme Court Slip Opinion, dated

[1]City of Grantsville, City of Riverton, Town of Perry, Town of Annabella, Salt Lake County Cottonwood Sanitary District and Sandy City (A. 386-87).

January 16, 1974, p. 22). This Petition for Rehearing is also based upon the printed record herein (Appendix, Volumes I and II).

I.

Statement of the Case.

The Court's Opinion of January 16, 1974, affirms the judgment of the Court of Appeals for the Ninth Circuit. It is respectfully submitted that as to certain respondents[2] the judgment of the Court of Appeals and the Opinion of this Court is unsupported by the record herein. Such respondents did not move to intervene until December 29, 1969 (which was twenty-five (25) days after the Court's order of December 4, 1969) [A. 4, 386-87; R. 364-66].

II.

The Opinion of This Court May Be Construed as Permitting Intervention by Each of the Respondents Who Did Not Move to Intervene Until After the Period of Time Designated Therein.

This Court's Opinion, dated January 16, 1974, reads in part as follows:

> "The class suit brought by Utah was filed with 11 days yet to run in the period as tolled by § 5(b), and the intervenors thus had 11 days after the entry of the order denying them participation in the suit as class members in which to move for permission to intervene. Since their motions were filed only eight days after the entry of Judge Pence's order, it follows that the motions were timely." (United States Supreme Court Slip Opinion, dated January 16, 1974, p. 22).

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[2]A. 4, 386-87; R. 364-66; See, Footnote 1, *supra.*

It is true that a majority of respondents filed motions to intervene on December 12, 1969, which was eight days after the Court's order of December 4, 1969 [A. 3, 355-59; R. 359-63]. However, certain of the respondents[3] did not file motions to intervene until December 29, 1969 [A. 4, 386-87; R. 364-66]. The latter date was two weeks after the period of intervention designated by this Court's Opinion. It follows that as to the respondents who filed their motions to intervene on December 29, 1969, the order of the trial court denying leave to intervene must be affirmed.

III.
Conclusion.

It is respectfully submitted that this Court should issue its mandate directing reinstatement of the Order of the District Court as to respondents who filed motions for intervention on December 29, 1969.

Dated: February 7, 1974.

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and
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(Continued on next page)

[3]City of Grantsville, City of Riverton, Town of Perry, Town of Annabella, Salt Lake County Cottonwood Sanitary District and Sandy City (A. 486-87).

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Certificate of Counsel.

Counsel for petitioners hereby certifies that the Petition for Rehearing herein is presented in good faith and is not for delay. Counsel also certifies that the Petition for Rehearing is restricted to the grounds stated therein, namely, that certain of the respondents did not file motions to intervene until December 29, 1969, which is after the eleven-day period for intervention as determined by this Court.

Dated: February 7, 1974.

JESSE R. O'MALLEY,

Attorney for Petitioners.